
CANADA / JUDGMENT

Schultz v. Landry

2007 BCSC 994

COURT

Supreme Court of British Columbia

DECIDED

5 July 2007

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2007 BCSC 994 Schultz v. Landry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Schultz v. Landry,

2007 BCSC 994

Date: 20070705

Docket: S98583

Registry: New Westminster

Between:

Shane Schultz

Plaintiff

And

Gwedolyn Ellen Landry

Defendant

Before: The Honourable Madam Justice Russell

Reasons for Judgment

Counsel for Plaintiff

R. Brajovic

Counsel for Defendant

R. Rhodes

Date and Place of Trial:

May 7, 8, 9 & 10, 2007

New Westminster, B.C.

Introduction

- [1] Mr. Schultz, now 52 years old, lived with Ms. Landry, now 50 years old, for a period of approximately 6 years. I say "approximately" because it appears that he moved to the shed behind the house after they had been together for 5 years.
- [2] The couple moved to Langley, British Columbia, from Alberta and commenced cohabitation in September, 1999. Ms. Landry owned a house in St. Albert, Alberta, as did Mr. Schultz. They agreed they would pool their resources on the sale of their houses for the purchase of a new house in British Columbia and would, thereafter, share the expenses of the mortgage. This made sense considering that the cost of a house in St. Albert was much lower than the cost of a house in Langley, British Columbia.
- [3] Ms. Landry brought with her two of her three children for whom she hoped child support from her former husband would continue. Her 15-year old son remained in Alberta with her former husband.
- [4] Mr. Schultz was at all times the higher earner of the two, but he was prepared to accept that Ms. Landry would contribute the smaller amount towards the down payment, help with the mortgage payments and, on that basis, the title to the Langley house would be held jointly. Ms. Landry would have had to continue to make mortgage payments on her house in St. Albert, to maintain her children (3 rather than the 2 who accompanied her to Langley) and her expenses to do so in Langley would not be much different were she to continue to contribute at the same level.
- [5] Mr. Schultz was transferred by his company and all moving expenses for both households were paid by his employer. His condominium sold quickly. Ms. Landry's house took a year to sell, during which time she had to continue to pay the mortgage on it, taxes and insurance. She rented it for an amount slightly less than the mortgage so was forced to subsidize the mortgage payment. This hampered her ability to make the contribution she had agreed to make.
- [6] Once Ms. Landry's house sold, she was feeling less confident about the relationship with Mr. Schultz. As a result, she "changed her mind" about contributing the \$56,000 proceeds of her house to the mortgage and did not contribute to the monthly payments.
- [7] She bought the larger part of the groceries used in the house, not surprisingly considering she was feeding her two daughters and herself, although she also made some meals for Mr. Schultz. He also bought groceries since he testified that Ms. Landry did not buy enough to keep everyone fed. He continued to ask her for the mortgage contribution and to complain

about her lack in that regard. He also asked her to remove her name from the title of the house if she did not intend to contribute. She refused his request. Throughout the time they were together, Mr. Schultz asked Ms. Landry repeatedly for a contribution to the house. During the relationship, Ms. Landry had a GIC, contributed some money to her RRSP, bought two new vehicles, one with help from her father, and maintained a savings account.

- [8] When the couple met, Ms. Landry was in receipt of Employment Insurance. During the course of their relationship, she had and left a series of jobs. The jobs were low-level clerical jobs for the most part. Her highest paying job was as a receptionist with an accounting firm, but she quit that job to complete a practicum for a unit clerk course. She did not find work as a unit clerk but did work in a seniors' facility for a short period. She had several periods of unemployment over the six years, although it appeared she was able to find jobs when she went to temporary agencies.
- [9] She also cared for Mr. Schultz following a serious motor vehicle accident which occurred shortly after they moved to Langley. For one month, he was very dependent on her to assist him with personal services. After that, he was on the mend and was better able to attend to his personal needs himself. Mr. Schultz had two further accidents after this, but did not require significant care while recovering from those.
- [10] The two of them took a number of holidays together. Most of the holidays were paid for by Mr. Schultz, although Ms. Landry contributed \$1,000 to their trip to California following the first motor vehicle accident.
- [11] Mr. Schultz gave Ms. Landry a number of expensive gifts, from the time they met in Alberta almost until the time she moved out of the house. While it seems odd that he would continue to give her gifts, while at the same time being angry with her as they were in continuing conflict over financial matters, he did so. As well, he continued to send her affectionate greeting cards, again almost until the end.
- [12] While they lived in the house together, they shared many of the maintenance tasks. They both did laundry, both tended to the garden with Mr. Schultz doing the lawns and clean-up, and Ms. Landry looking after the flowers and doing some pruning. Ms. Landry did some painting and helped to install a laminate floor in the kitchen. Meals together appear to have been rare with the more usual scenario being that everyone "grabbed" something on the run. Mr. Schultz worked long days as a salesman and was likely not around at supper time.
- [13] When the relationship broke up, Mr. Schultz brought this action against Ms. Landry for a declaration that she holds her half of the joint title to the house in trust for him. He also asks for a vesting order so the house would be in his name alone and for various alternative relief. Ms. Landry counterclaims for spousal maintenance, child support for her 2 daughters to whom she says that Mr. Schultz stands as a stepparent, an order for partition and sale of the residence and a share of the "assets of the parties" based on constructive and resulting trust.

Issues

1. Is there a trust over Ms. Landry's half of the joint tenancy in the residence?
2. What is the effect of any breach of the agreement between the parties with respect to the contribution to the down payment?
3. Was Mr. Schultz unjustly enriched by Ms. Landry's household contributions?
4. Is Ms. Landry entitled to spousal maintenance?
5. Is Mr. Schultz a stepparent under the Family Relations Act and, if so, what are his obligations thereunder?
6. Is Ms. Landry entitled to some share of Mr. Schultz's assets, accumulated during the relationship, on the basis of a constructive and resulting trust?

The Residence

- [14] Ms. Landry pleaded and, until the trial of this matter, maintained a position that she had never agreed to contribute the proceeds of the sale of her house to the purchase of the Langley house. However, at trial, and after hearing the unequivocal evidence of the real estate agent that at the time of the offer on the Langley house, Ms. Landry stated that as soon as her house sold she would pay its proceeds on the mortgage of the Langley house, Ms. Landry agreed that, in fact, she had made this agreement. Her counsel persisted in calling it a "plan" and, thus, subject to change when circumstances changed, but I find that she had entered into an agreement with Mr. Schultz as stated.
- [15] I find, as well, that committing to this agreement would have conferred a substantial benefit on Ms. Landry for the reason that, notwithstanding her smaller contribution to the house, it would be held in joint tenancy. Mr. Schultz stated that if the parties were to separate, the intention was to sell the house, deduct the parties' down payments and then split any increase in value. Given the notable increase in the real estate market, had Ms. Landry honoured the agreement, she would have realized a profit on the house. However, for her own reasons, she decided not to apply the proceeds of the sale of her home in Edmonton to the mortgage on the house in Langley. Rather, she kept her financial affairs separate from Mr. Schultz, using the proceeds of her house to purchase a GIC and a car, and contributing to her RRSP at the time she was living in the house, rather than paying down the mortgage.
- [16] The issue the Court must decide, then, is what Ms. Landry's breach of this agreement means for the parties' respective beneficial interests in the property.
1. Is there a resulting trust in favour of Mr. Schultz?
- [17] The first issue for decision is whether or not the fact that Mr. Schultz advanced the entirety of the capital used to purchase the house, and paid all of the mortgage payments, taxes, and utilities, means that Ms. Landry holds her interest in the house on resulting trust for him.

- [18] The plaintiff observes that there are three legal presumptions which may have applicability to the case at bar. These are:
1. The presumption of resulting trust. This would arise in favour of the spouse who provided all of the funds for the purchase of a property.
 2. The presumption of advancement. This would arise in favour of the spouse whose name has been gratuitously put on title by the contributing spouse.
 3. The presumption of indefeasibility, i.e. that the holder of legal title is presumed to hold both legal and equitable interest in the property. This presumption arises by virtue of the doctrine of indefeasible title within the Land Title Act, R.S.B.C. 1996, c. 250. Sub-section 23(2) of that act establishes that registration of an indefeasible title is conclusive evidence at law and in equity that the person named is indefeasibly entitled to an estate in fee simple. Thus, the burden is on the party seeking to challenge the state of title to prove otherwise (see *Bajwa v. Pannu* (2006), 57 B.C.L.R. (4th) 161, 2006 BCSC 921 at ¶ 11-12).
- [19] I have recently dealt in some detail with the modern role of the presumptions of resulting trust and of advancement in the case of *Eisner v. Baker* (2007), 33 R.F.L. (6th) 362, 2007 BCSC 83 at ¶ 47-50. The role of these presumptions has been much reduced in modern times, and these presumptions have been held not to apply where there is evidence of the intention of the parties (see e.g. *Eisner v. Baker*, supra, at ¶ 51; *Aleksich v. Konradson* (1995), 5 B.C.L.R. (3d) 240, 12 R.F.L. (4th) 177 at ¶ 26 (C.A.)).
- [20] The third presumption raised by Mr. Schultz is the presumption that the holder of legal title holds both a legal and equitable interest in the property. The plaintiff cites *Bajwa v. Pannu*, supra, as a case in which this presumption was applied. In that case, the property at issue was registered jointly in the names of three persons. The defendant, Pannu, was romantically involved with the plaintiff, Virk. The property was purchased for the benefit of Virk and her mother, who were unable to qualify for a mortgage. Pannu, therefore, became a covenantor on the mortgage, although he at no point made any financial contribution to the acquisition of the property. However, he did assist in engaging a realtor and searching for the property. A down payment of \$35,000 was paid for by the Virk family, and all of the mortgage payments were made by a member of the Virk family.
- [21] Arnold-Bailey J. concluded, after considering all of the evidence, that there was no cogent evidence to rebut the statutory presumption of indefeasibility. Had there been a default, Pannu could have been solely responsible for any shortfall as a covenantor, and there was no clear agreement limiting the extent of his interest in the property. He was, thus, awarded a one-third legal and equitable interest in the property, subject to an accounting for all amounts paid by the Virk family.
- [22] In *Bajwa v. Pannu*, Arnold-Bailey J. noted at para. 13 that:

In *Skender v. Skender*, [2005] B.C.J. NO. 673, 2005 BCSC 418, *aff'd* [2006] B.C.J. No. 700, 2006 BCCA 162, the Court confirmed that the statutory presumption may be displaced by two equitable principles, namely:

- (1) the presumption of advancement; or
- (2) the enforcement of an agreement between the parties in order to prevent an unjust enrichment if the face of the title is upheld.

[23] In this case, I conclude that resort to the above presumptions is not necessary. There is sufficient evidence of the intentions of the parties and, specifically, evidence of an agreement between them to contribute to the purchase of the house, in order to decide the matters before me. Thus, I find that the evidence of the intentions of the parties is sufficient to displace any presumptions of resulting trust, of advancement, or of indefeasibility.

[24] Specifically, as I have found above, the parties had an agreement, at the time that the house was purchased, that Ms. Landry would apply the proceeds of the sale of her home in Edmonton towards the mortgage on the house in Langley. They also appear to have had an agreement to split the household expenses evenly, which the plaintiff submits was very fair to Ms. Landry as she had two children with her. However, Ms. Landry decided not to contribute on the basis that the agreement was not in writing; that it was a plan that was open to change. As she did not feel things were going well, she decided to change the plan. The choice was hers to make, but the end result is that the agreement under which the house was purchased was broken.

[25] At the time that the house was purchased and registered in joint title, it was clearly the intention of the parties, including Mr. Schultz, that both parties would benefit from any increase in the value of the house. However, I find that Mr. Schultz's intention to benefit Ms. Landry, by advancing all the funds for the purchase of the home, was contingent upon her contributing funds to pay down the mortgage once her home in Edmonton was sold. Thus, it was not his intention at the time the house was purchased to make a gift to her of her interest in the house--it was the intention of both parties that she would receive an interest in the house in exchange for contributing towards the purchase price of the house. She reneged on her portion of the agreement. I find that Mr. Schultz did not intend to provide Ms. Landry with a beneficial interest in the house if she failed to contribute towards its purchase price.

[26] Consequently, as Mr. Schultz advanced all the purchase monies for the house and paid all the mortgage payments, taxes and utilities, I find that Ms. Landry holds legal title to the house on a resulting trust in favour of Mr. Schultz. If Ms. Landry has any claim to an interest in the house or a share of its increased value, she must demonstrate such an entitlement under the principles of unjust enrichment and constructive trust. For an example of such a situation, see *Wilson v. Munro* (1983), 42 B.C.L.R. 317, 32 R.F.L. (2d) 235 (S.C.), in which the presumption of advancement was held not to apply, even though the property was purchased in the joint names of both parties, but Mrs. Munroe was awarded a constructive

trust over 15% of the property because Mr. Wilson had been unjustly enriched by her provision of labour without remuneration.

2. Is Ms. Landry entitled to an interest in the house by reason of constructive trust?
- [27] Ms. Landry contends that, during the parties' relationship, she was a homemaker and provided most of the groceries, did the housework, including gardening, window washing, flower and hedge planting. Mr. Schultz paid the mortgage, taxes, and utilities. He also did some of the work around the house and purchased some of the groceries. Ms. Landry argues that she did offer to contribute some of the grocery money towards the mortgage, but Mr. Schultz indicated that the existing arrangement was acceptable.
- [28] In view of the plaintiff's evidence that he continued to urge Ms. Landry to contribute towards the mortgage throughout the duration of their relationship, and Ms. Landry's evidence that Mr. Schultz continued to "grind" her for money, I do not accept that Mr. Schultz acquiesced in her non-payment of the mortgage. Further, I do not see how Ms. Landry could be of the view that he accepted that she could not or would not contribute towards the mortgage, when the evidence of both parties clearly indicates that this was an ongoing point of contention between them. The evidence establishes that he asked her to remove her name from title after it was clear that she was not going to apply the proceeds from the sale of her Edmonton home to the mortgage.
- [29] The question for the Court, thus, becomes one of whether a case of unjust enrichment is made out on these facts. For the reasons below, I have concluded that Ms. Landry has failed to demonstrate that Mr. Schultz has been unjustly enriched by her actions throughout the duration of the parties' relationship.
- [30] The principle that domestic services may ground a claim for unjust enrichment is well-established in Canadian law: see especially the discussion in *Peter v. Beblow*, [1993] 1 S.C.R. 980, 77 B.C.L.R. (2d) 1. However, the rendering of domestic services itself does not per se entitle a claimant to a proprietary interest in property. A party must demonstrate, both that there has been unjust enrichment and that a monetary remedy would be inadequate: *Peter v. Beblow*, supra, at ¶ 3, per McLachlin J.
- [31] The test for unjust enrichment requires a claimant to establish three elements: an enrichment, a corresponding deprivation, and the absence of a juristic reason for such enrichment: *Peter v. Beblow*, supra, at ¶ 3. A straightforward economic approach is to be taken to the first two elements of the test for unjust enrichment: see *Crawford v. Rekus*, [1995] B.C.J. No. 1821 at ¶ 40 (S.C.) (Q.L.), citing *Peter v. Beblow*, supra, at ¶ 8. In contrast, the third element of unjust enrichment, the absence of a juristic reason for the enrichment, is broad enough to encompass policy considerations: *Peter v. Beblow*, supra, at ¶ 8.
- [32] The third element involves considerations of the legitimate expectations of the parties (*Pettkus v. Becker*, [1980] 2 S.C.R. 834 at 849, 117 D.L.R. (3d) 257). In the case of common law relationships, this may include a consideration of the degree to which the parties' economic

well-being was intertwined, because this fact may reflect the legitimate expectations of the parties. The fact that the parties' "lives and well-being were fully integrated" in *Wilson v. Munro*, supra, was an important factor in finding unjust enrichment, because that fact demonstrated that one party had a reasonable expectation of receiving a share of the property, and the titled party knew (actually or by imputation) of this expectation (at ¶ 28, relying on *Pettkus v. Becker*, supra, at 850, per Dickson J.).

- [33] The plaintiff cites *McDonald v. Eckert* (2004), 7 E.T.R. (3d) 67, 2004 BCSC 323, to support the idea that the parties' capital contributions should be subtracted from the value of a property, and then any increase in value should be divided between the parties. *Zimmerman v. Lazare*, 2007 BCSC 626, a case relied on by the defendant, suggests likewise.
- [34] *McDonald v. Eckert*, although an estate case, was a case in which Mr. McDonald contributed the entirety of the purchase price of a home. However, Ms. Eckert, who lived with him for 14 years, was held to be entitled to an equal share of the increase in value of the property, on the basis that she was entitled to a constructive trust over a portion of the property. While Mr. McDonald had paid all of her living expenses, purchased a vehicle for her and paid for a substantial portion of her vacation trips, her efforts in housekeeping, cooking, and taking care of him while he was seriously ill and recovering from colon cancer, represented an unjust enrichment. Halfyard J. concluded that she reasonably expected to be compensated for her efforts, but that a half-interest in the property would unjustly enrich her. Therefore, only half of the increase in value of the property, after subtracting Mr. McDonald's capital contributions, was awarded.
- [35] Similarly, in *Zimmerman v. Lazare*, the parties purchased a condominium together; however, they contributed unequal amounts to the down payment. Pitfield J. held that each party's capital contribution should be returned to them, and that any further increase in the value of the property was to be shared between them. Pitfield J. noted at ¶ 22 that the task of the court in determining each party's interest in the property is to properly construe the transaction between the parties and the rights of each arising from it.
- [36] Other cases of unjust enrichment that were cited by the parties include *Peter v. Beblow*, supra, in which Ms. Peter lived with Mr. Beblow for twelve years and provided domestic services by performing household chores and raising the parties' mixed family. She was awarded a constructive trust over 100% of the parties' shared residence.
- [37] In *Crawford v. Rekus*, supra, no unjust enrichment was demonstrated where the parties resided in a common-law relationship for approximately five years, during which time Mr. Crawford purchased a property entirely with his funds, and Ms. Rekus made contributions by doing some cooking and domestic chores, as well as assisting with planning renovations to their home. Mr. Crawford also did some of the domestic chores and, during the relationship, he paid her an allowance, purchased expensive gifts for her and paid for many trips and holidays.

- [38] In *Aleksich v. Konradson*, *supra*, the parties lived together for five years. They shared expenses and had an agreement that the property would be shared equally between them, after deducting Mr. Konradson's financial contributions to the property. Although both parties made non-financial contributions to the property, Ms. Aleksich's non-monetary contributions were substantially greater. She was, therefore, awarded one-half of the value of the property, after deducting the financial contributions of Mr. Konradson to the purchase and construction of the home.
- [39] In the case at bar, I conclude that the parties' arrangements, after Ms. Landry failed to contribute towards the mortgage, amounted to an agreement to share expenses. Both parties made contributions to the efficient running of the household and I cannot conclude that Mr. Schultz has been unjustly enriched on the basis of Ms. Landry's unpaid household labour. In my view, the issue of whether there has been unjust enrichment in this case is determined by the fact that both parties contributed to the efficient running of the household and both received a benefit in return. As the defendant's submissions state clearly: "The parties shared the household responsibilities." [Emphasis added.] While their contributions may have been different in nature, both contributed to the household.
- [40] This is not a case in which the parties made a joint decision that one of them would remain at home to act as homemaker and parent, and sacrificed career opportunities in the process. Rather, it was an agreement whereby two independent persons would share expenses in a joint household, in order that they might afford the increased cost of living in Langley as compared with Edmonton. Ms. Landry did not work for much of the relationship, but that appears to be due to difficulties she had in retaining employment. The reasons for her continued inability to work are not relevant; she appears to have been able to work when she wanted to, and her reasons for leaving various employers had nothing to do with Mr. Schultz or her household responsibilities. She was responsible for parenting three children prior to the relationship, and would have continued to be responsible for parenting duties whether or not she resided with Mr. Schultz. Likewise, Mr. Schultz would have continued working or not working as he did throughout their relationship, regardless of whether Ms. Landry was with him.
- [41] There is also the matter of the expectations of the parties. Mr. Schultz had been married twice previously and had signed a pre-nuptial agreement before the second marriage. He testified that he did not think that he needed to sign a co-habitation agreement prior to residing with Ms. Landry, although he did not receive legal advice in that regard. Ms. Landry was specifically asked to remove her name from the title if she did not intend to contribute towards the mortgage payments. She could have had no reasonable expectation of receiving an interest in the house if she did not contribute towards the cost of its acquisition.

- [42] Finally, the fact that Ms. Landry kept her finances entirely separate from Mr. Schultz (other than contributions for groceries), strongly suggests that she was not depending on him for her future financial security. Indeed, she seemed not to trust that he would look after her and that appears to be her primary reason for not contributing the proceeds from the sale of her house in Edmonton towards the mortgage. The two were far from being financially intertwined.
- [43] Thus, although Ms. Landry's work around the house may have enriched Mr. Schultz from a purely economic standpoint, she has failed to demonstrate that she suffered a corresponding deprivation: she did not give up any career opportunities, she enhanced her savings, and she and her daughters lived rent-free for the duration of the relationship. Further, she has failed to demonstrate the absence of a juristic reason for any enrichment: after she breached the agreement of the parties, she had no legitimate expectation of receiving an interest in the Langley house. Based on his repeated attempts to get Ms. Landry to contribute towards the mortgage or remove her name from title, Mr. Schultz did not reasonably expect that she would be entitled to any interest in the house and he made this position quite clear. She could not reasonably have expected that she would receive an interest in the house if she did not contribute the proceeds from the sale of her Alberta home.
- [44] In the result, I conclude that Ms. Landry's claim for a constructive trust must fail, insofar as it relates to her provision of domestic services. Ms. Landry has not demonstrated that she has forgone any other opportunities to reside with Mr. Schultz and, indeed, she has actually improved her economic position by contributing to her RRSP even with the minimal income she did earn. In contrast, Mr. Schultz was economically prejudiced by having to pay the entire housing cost. This meant that he was unable to contribute to his RRSPs to the full extent that he would have liked and, also, that he had to forgo the purchase of shares from his employer on favourable terms.
- [45] However, there is the matter of the one-month period following Mr. Schultz's accident during which Ms. Landry provided a significant level of care to him. For this one-month period, I conclude that she is entitled to receive some compensation for the services rendered to Mr. Schultz, which clearly benefited him and precluded her from pursuing other opportunities at that time, had she chosen to do so. However, for this month, a monetary award in the amount of the value of the services rendered, rather than a proprietary remedy in the nature of a constructive trust, is both appropriate and adequate. I fix the value of Ms. Landry's care of Mr. Schultz during that month at \$2,000, which approximates the maximum level of monthly earnings Ms. Landry achieved during the relationship.

Is Ms. Landry Entitled to a share of Mr. Schultz's RRSPs?

- [46] The conclusions that I have stated above, with respect to the issue of constructive trust, apply with even greater force to Mr. Schultz's RRSPs. Ms. Landry made no contribution whatsoever to Mr. Schultz's RRSPs. On the contrary, his payment of the entirety of the

couple's housing expense meant that he was unable to contribute as fully to his RRSP as he intended. He was also precluded from purchasing shares at a favourable rate from his employer. The value of Mr. Schultz's RRSPs was not enriched by his relationship with Ms. Landry. I note further that the value of her RRSP was increased because she was relieved of paying any expenses in respect of housing for herself and her daughters. Accordingly, her claim for an interest in his RRSPs fails.

- [47] I observe at this point that the Supreme Court of Canada made clear in *Walsh v. Bona*, [2002] 4 S.C.R. 325, 2002 SCC 83, that common-law couples are not to be treated identically with married couples in respect of property division. Unless there is some statutory basis granting her an interest in Mr. Schultz's RRSPs, the defendant must bring herself squarely within the principles relating to the law of constructive trusts. She has not done so. See also *Crawford v. Rekus*, supra (holding that the defendant was not entitled to an interest in the plaintiff's boat or RRSPs on the basis of a constructive trust in "family assets" because she had made no contribution to these assets).

Is Ms. Landry Entitled to Spousal Support?

- [48] In addition to a share in the increased value of the house, Ms. Landry also seeks a lump sum payment of \$40,000 as spousal support. Counsel for Ms. Landry was clear that she was entitled to spousal support because she is a "spouse" as that term is defined in the Family Relations Act, R.S.B.C. 1996, c. 128, but less clear as to where a basis for awarding spousal support could be found. Simply being a "spouse" within the meaning of the Family Relations Act does not provide a sufficient basis on which to award spousal support. I have concluded that Ms. Landry has failed to prove that she is entitled to spousal support.
- [49] Counsel argued that she was entitled to compensatory support by reason of the sacrifices she made in moving to Vancouver with Mr. Schultz. He asserts that she is entitled to support on compensatory grounds because she looked after the house and the plaintiff's step-children and therefore could not look for work; on contractual grounds because there was an implied contract that Mr. Schultz would take care of her and, on non-compensatory grounds, because she left Alberta at his request.
- [50] *Moge v. Moge*, [1992] 3 S.C.R. 813, 99 D.L.R. (4th) 456, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 63 B.C.L.R. (3d) 77, clearly established three different bases for spousal support: contractual, compensatory, and non-compensatory (or needs and means). A summary of these bases of spousal support was provided by McLachlin J. (as she then was) in *Bracklow* at para. 49:

In summary, the statutes and the case law suggest three conceptual bases for entitlement to spousal support: (1) compensatory, (2) contractual, and (3) non-compensatory. Marriage, as this Court held in *Moge* (at p. 870), is a "joint endeavour", a socio-economic partnership. That is the starting position. Support agreements are important (although not necessarily decisive), and so is the idea that spouses should be compensated on marriage breakdown for losses and hardships caused by the marriage. Indeed, a review of cases suggests that in most circumstances

compensation now serves as the main reason for support. However, contract and compensation are not the only sources of a support obligation. The obligation may alternatively arise out of the marriage relationship itself. Where a spouse achieves economic self-sufficiency on the basis of his or her own efforts, or on an award of compensatory support, the obligation founded on the marriage relationship itself lies dormant. But where need is established that is not met on a compensatory or contractual basis, the fundamental marital obligation may play a vital role. Absent negating factors, it is available, in appropriate circumstances, to provide just support.

- [51] On the facts before me, I cannot conclude that Ms. Landry has proven that she is entitled to an award of spousal support on any of these bases.
- [52] Ms. Landry is not entitled to spousal support on compensatory grounds because, as explained above, she has not foregone any opportunities in the course of residing with Mr. Landry. She still had the opportunity to continue to work, as she had been doing previously. Further, her asset position was actually increased through her relationship with Mr. Schultz. She was able to contribute funds from the sale of her home to a GIC, and to contribute to an RRSP because she did not pay any funds towards her housing expenses. She also received a number of expensive gifts and vacations during the relationship.
- [53] Nor is she entitled to support on a contractual basis: the parties kept their finances relatively separate. Ms. Landry herself was the one who breached the parties' agreement to contribute funds towards the mortgage. While initially this was due to her inability to sell her home in Edmonton, she herself admitted that by the time these funds were available she was uncertain of the relationship. She was not relying on Mr. Schultz to support her in the future, nor was Mr. Schultz expecting to do so. Throughout their relationship he continually pressed her to contribute towards the mortgage and, yet, she did not do so. There is no evidential basis from which to imply an agreement between these two individuals that they would support each other.
- [54] I also cannot find that Ms. Landry is entitled to spousal support on a non-compensatory basis. While counsel urges that she left Alberta at Mr. Schultz's request, it does appear to have been a joint decision which would have been to the benefit of both parties. Ms. Landry's employment opportunities in Langley appear to have been roughly similar to those available to her in Alberta. While she did sell her house in Alberta and, therefore, did not realize further gains on that property, it was her choice to invest the funds from that home in a GIC rather than in the Langley house, which would have afforded her a significant gain.
- [55] While Ms. Landry may earn less than Mr. Schultz, he complains that he has problems with Crohn's disease and can no longer continue working to the same level. He testified that he has saved carefully so that he can retire at a relatively early age. Ms. Landry counters that he has coped with Crohn's disease for several years, and that ongoing income should be attributed to Mr. Schultz at historical earnings levels. However, counsel seems to stop short of asserting that Ms. Landry is in need of spousal support. None of her children currently resides with her, and there is no evidence before me that Ms. Landry is unable to obtain

work to support herself at a reasonable level. The fact that Mr. Shultz may have earned significant amounts of income in the past, implying the means to pay, is not sufficient to entitle Ms. Landry to spousal support, particularly where the medical evidence, although not sufficient to prove Mr. Schultz is incapable of working, supports his contention that it has become very difficult for him to continue in his previous employment.

[56] The crux of this entire case is that Ms. Landry cannot have her cake and eat it too: having opted to use her funds herself for her own purposes and to ensure her own financial security, she cannot now complain that she was dependent on Mr. Schultz to provide for her future financial security, simply because the house has appreciated significantly in value and he previously earned a significant income. Had the house lost value, Ms. Landry would have been in a significantly better position than Mr. Schultz. Having decided not to become economically intertwined with Mr. Schultz and to keep her money for herself, Ms. Landry cannot now seek to alter the facts, in retrospect, to make it appear as though she was depending on Mr. Schultz to look after her all along.

Should the Court order Mr. Schultz to pay child support for Mackenzy?

[57] The Family Relations Act defines "parent" as follows:

"parent" includes

- (a) a guardian or guardian of the person of a child, or
- (b) a stepparent of a child if
 - (i) the stepparent contributed to the support and maintenance of the child for at least one year, and
 - (ii) the proceeding under this Act by or against the stepparent is commenced within one year after the date the stepparent last contributed to the support and maintenance of the child.

[58] Because Mr. Schultz lived with Ms. Landry and provided for both Brittany and Mackenzy for more than one year, he qualifies as a stepparent to both Brittany and Mackenzy who both resided with the parties during their relationship. He would not be considered a stepparent of Ms. Landry's son who resided with his natural father.

[59] However, I have concluded that Ms. Landry is unable to bring an application for child support from Mr. Schultz at the present time.

[60] The evidence before me is that Brittany is currently residing with her natural father. Therefore, Ms. Landry concedes that there should be no child maintenance for Brittany.

[61] The evidence also establishes that Mackenzy is presently residing with Mr. Schultz. Therefore, Ms. Landry is not able to seek child support for Mackenzy at this time, and she concedes this point in her submissions. Although Mr. Schultz states he did not encourage this situation, he is prepared to allow it. Additionally, the evidence is that the girls receive money directly from their natural father and that this makes money a point of contention

between Ms. Landry and her children. However unorthodox the situation may be, it seems that Mackenzy's needs are being met.

- [62] I also note that it does not appear that Ms. Landry effectively pursued her former husband to provide a reasonable level of child support after she left Alberta. In view of the fact that Ms. Landry is not able to seek child support from Mr. Schultz at this time, I need not consider whether it is necessary for Ms. Landry to take effective steps to obtain a proper level of child support from her former husband, the children's biological father, before pursuing Mr. Schultz who, as a stepparent, would not necessarily be ordered to pay the table amount of child support: see section 5 of the Child Support Guidelines.

Conclusions

- [63] I conclude that Ms. Landry holds her registered interest in the house on trust for Mr. Schultz. Ms. Landry has not demonstrated that Mr. Schultz intended to confer a beneficial interest in the house if she did not contribute any funds towards its purchase. She has also failed to demonstrate any entitlement to a constructive trust in the house or in Mr. Schultz's RRSPs.
- [64] Mr. Schultz is, therefore, entitled to a declaration that Ms. Landry holds all of her legal interest in the House in trust for his benefit. Mr. Schultz is also entitled to an order vesting the entire legal interest in the property in him. Such a vesting order was granted, for example, in *Vogler v. Matzick*, [1987] B.C.J. No. 558 (S.C.) (QL), rev'd (1988), 33 B.C.L.R. (2d) 82 (C.A.) (on the issue of whether the gift was conditional on marriage), to vest title solely in one joint owner where the other was found to hold title on trust.
- [65] Mr. Schultz is required to pay to Ms. Landry \$2,000 as compensation for the services she provided to him during his one-month period of convalescence after his first accident.
- [66] Ms. Landry's claims for partition and sale of the house, a share of the remaining assets of the parties, spousal maintenance, and child maintenance for her daughter, Mackenzie Landry, are dismissed.
- [67] Mr. Schultz is entitled to his costs in this action on the basis of his substantial success.

Russell J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/07/09/2007bcsc0994.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/schultz-v-landry-2007>

Prepared on 26 October 2026 · Esheria